IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

THURSDAY, THE 11TH OCTOBER 2007 / 19TH ASWINA 1929

MFA.No. 755 of 2002()

OPMV.443/1995 of MOTOR ACCIDENT CLAIMS TRIBUNAL,WAYANAD, KALPETTA
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APPELLANTS (PETITIONERS):
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1. **M.RAMACHANDRAN, S/O. GOPALAN,**
   AGED 57 YEARS, GOPALA MANDIR, VADUVANCHAL POST,
   MUPPAINAD AMSOM, VYTHIRI TALUK, WAYANAD DISTRICT.

2. **T.V.AMBUJAM, W/O.M.RAMACHANDRAN,**
   AGED 46 YEARS, GOPALA MANDIR, VADUVANCHAL POST,
   MUPPAINAD AMSOM, VYTHIRI TALUK, WAYANAD DISTRICT.

3. **T.M.ROSNA, D/O. M.RAMACHANDRAN,**
   AGED 24 YEARS, GOPALA MANDIR, VADUVANCHAL POST,
   MUPPAINAD AMSOM, VYTHIRI TALUK, WAYANAD DISTRICT.

4. **T.M.REMYA, D/O. M.RAMACHANDRAN,**
   AGED 23 YEARS, GOPALA MANDIR, VADUVANCHAL POST,
   MUPPAINAD AMSOM, VYTHIRI TALUK, WAYANAD DISTRICT.

5. **T.M.REJILKUMAR, S/O. M.RAMACHANDRAN,**
   AGED 19 YEARS, GOPALA MANDIR, VADUVANCHAL POST,
   MUPPAINAD AMSOM, VYTHIRI TALUK, WAYANAD DISTRICT.

BY ADV. SRI.N.J.ANTONY

RESPONDENTS(RESPONDENTS):
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1. **DIVAKARAN K.T., S/O. THANKAPPAN,**
   AGE NOT KNOWN, AMBALAKUNNEL HOUSE,VADUVANCHAL POST
   VYTHIRI TALUK, WAYANAD DISTRICT.
   (DRIVER OF BUS NO.KL-12/2379 D.L.NO. NOT KNOWN).

2. PRIYAN THOMAS, S/O. BABY THOMAS,
AGE NOT KNOWN, KOTTAMALA PLANTATIONS,
VADUVANCHAL POST, VYTHIRI TALUK.
(OWNER OF BUS NO.KL-12/2379).

3. UNITED INDIA INSURANCE CO. LTD.,
DIVISIONAL OFFICE, P.B.NO.539, KALLAI ROAD,
CALICUT.

R3 BY ADV. SRI.M.A.GEORGE

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 11/10/2007 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.HEMA, JJ.

M.F.A.NO.755 OF 2002 ()

Dated this the 11th day of October, 2007

J U D G M E N T

KOSHY,J.

A 21 year old youngster died in a motor accident. His father aged 51 years mother aged 41 years and two sisters aged 18 and 16 years and 13 year old brother together filed an application for compensation claiming Rs.4,00,000/- before the Motor Accidents Claims Tribunal, Wayanad, Kalpetta. Even though tribunal found that accident occurred due to the negligence of the 1st respondent driver of the bus which was owned by the 2nd respondent and insured by the 3rd respondent Insurance company, only Rs.1,38,200/- was awarded as compensation. Quantum of compensation alone is disputed in this appeal.

2. Deceased was only 21 years old at the time of accident. The contention of the claimants was that compensation should be awarded taking the age of the

deceased cannot be allowed as he was an unmarried person and in such cases Supreme Court held that the age of the claimants has to be looked into. Mother was aged 41 years. Of course he is the eldest child and youngsters may looking upon him for help. It is true that if he was alive he may marry and parents and youngsters may not accept the same percentage of dependency from him. But there is likelihood of prospects in employment and as held by the Supreme Court as far as far as possible except in exceptional cases compensation should be calculated on the basis of the 2nd schedule even if claim is under Section 166. Only difference is that in the case of unmarried person, age of claimants also should be looked into. Taking the age of the mother and taking guidelines from the 2nd Schedule as held in ***APSRTC v. Minor N. Gayathri (2007 AIR SCW 5589)***, we fix 15 as the multiplier. For the purpose of calculating compensation with regard to the income, it was claimed that he was a business man earning Rs.5,000/- per month. But no data is produced to prove the income. However, he was aged 21 years and he was the eldest son. Even for a non-earning person or even for a child, income fixed under the 2nd Schedule was Rs.15,000/- per year (Rs.1,250/- per

month). Deceased was 21 years old and doing business and we fix Rs.1,500/- as the monthly income. By taking guideline from the 2nd Schedule, 15 was taken as the multiplier even though tribunal has taken 17 as the multiplier. If that be so, compensation payable will be Rs.1,500 x 12 x 15 = 2,70,000/-. After deducting $^{1}/_{3}^{rd}$ towards personal expenses, the compensation payable will be Rs.1,80,000/-. Tribunal has granted Rs.1,24,800/-. Hence additional compensation will be Rs.55,200/-. Only Rs.300/- was allowed for transporting to the hospital. From the place of occurrence at Padivayal his body has to be transported by special vehicle to his house at Vythiri. Therefore atleast Rs.1,000/- ought have been granted for transportation expenses and therefore additional amount of Rs.700/- is payable on that count. He was fighting for his death for three days. He suffered serious injuries. We are of the opinion that atleast Rs.10,000/- ought have been granted for pain and sufferings. Tribunal has awarded only Rs.5,000/-. So additional amount granted for pain and sufferings is Rs.5,000/-. We are of the view that for love and affection, treatment expenses etc. compensation granted are very low. However, we are not enhancing the compensation granted on other

heads. Hence additional compensation of Rs.60,900/- should be deposited by the 3rd respondent Insurance company with 7.5% interest from the date of application till deposit and on deposit of the above amount, father and mother are allowed to withdraw the same. With the above observations this appeal is partly allowed.

J.B.KOSHY, JUDGE

K.HEMA, JUDGE

prp

J.B.KOSHY & K.HEMA, JJ.

M.F.A.NO.755 OF 2002 (A)

J U D G M E N T

11th October, 2007